

UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

JEAN M. FRATUS

v.

C.A. No. 96-551-T

WILLIAM V. DEVINE, individually
and in his capacity as Chief of
Police of the North Providence
Police Department, RICHARD FOSSA,
individually and in his capacity
as both Mayor of the Town of North
Providence and the Director of Public
Safety of the Town of North Providence
and WILLIAM FAZIOLI, in his capacity
as Finance Director of the Town
of North Providence

MEMORANDUM AND ORDER

Introduction

ERNEST C. TORRES, United States District Judge.

This suit was brought by Jean M. Fratus pursuant to 42 U.S.C. § 1983 and the Gun Control Act of 1968, 18 U.S.C. §§ 921 et seq., as amended by the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 26 ("the Brady Act"). The gist of Fratus' claim is that William V. Devine, the police chief of the Town of North Providence, deprived her of her right to acquire a handgun by wrongfully representing that such acquisition would be unlawful under the terms of the Brady Act.

The case proceeded to trial and, at the conclusion of the plaintiff's evidence, the defendants moved for judgment as a matter of law. The Court concluded that the motion should be granted and

stated that it would issue a written Memorandum and Order elaborating on the reasons underlying that conclusion. Those reasons are set forth below.

Facts

Viewing the evidence in the light most favorable to the plaintiff, the facts may be summarized as follows. On August 7, 1996, Fratus, a resident of the Town of North Providence, sought to purchase a handgun from D & B Guns, a licensed firearms dealer located in the City of Providence. At that time, she completed a federal application form mandated by the Brady Act that included the following question: "Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?" She also completed an application form required by R.I. Gen. Laws § 11-47-35 that asked:

1. "Have you ever been adjudicated or under confinement for alcoholism?"

2. "Have you ever been confined or treated for mental illness?"¹

Fratus answered "No" to all of those questions.

D & B Guns forwarded copies of both forms to Chief Devine who discovered that Fratus had several misdemeanor convictions and that

¹Although the Rhode Island statute governing applications to purchase firearms requires that these two questions be asked, the statute governing eligibility to purchase a firearm is worded differently. It prohibits the purchase or possession of firearms by individuals who have ever been "adjudicated or . . . under treatment or confinement as an habitual drunkard" or "under guardianship or treatment or confinement by virtue of being a mental incompetent." Compare R.I. Gen. Laws § 11-47-35, with R.I. Gen. Laws § 11-47-6.

the sentences imposed for some of them required her to undergo drug, alcohol and/or mental health counseling. Devine also learned that there was a misdemeanor charge of assaulting a police officer pending against Fratus and that the police report relating to that incident attributed to Fratus a statement that she was taking medication for emotional and mental disorders.

On the basis of that information, Devine sent a letter to D & B Guns in which he stated that because of the pending charge, he was "rejecting" Fratus' application. Devine later explained his decision to Fratus by saying, "as of [August 14] you had outstanding charges within the Town of North Providence which had not been disposed of. Being that we are unable to predict what sentence the Judge will impose when those charges do go to court, we are unable to approve this request."

Upon receipt of Devine's letter, D & B Guns refused to consummate the sale and Fratus commenced this action. Since that time, Fratus has been convicted on two felony counts of assault with a dangerous weapon arising from an unrelated incident and it has been discovered that Fratus has a history of treatment for mental illness.

Discussion

I. The Judgment as a Matter of Law Standard

A defendant is entitled to judgment as a matter of law "[i]f during a trial by jury [the plaintiff] has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for [the plaintiff] on that issue." Fed.

R. Civ. P. 50(a)(1). In ruling on such a motion, the Court must view the evidence in the light most favorable to the plaintiff and is required to give the plaintiff the benefit of any reasonable inferences that may be drawn from the evidence. Murray v. Ross-Dove Co., 5 F.3d 573, 576 (1st Cir. 1993). It is not the Court's function to assess the credibility of witnesses or to decide where the weight of the evidence lies. Rolon-Alvarado v. Municipality of San Juan, 1 F.3d 74, 77 (1st Cir. 1993). After viewing the evidence through that prism, the Court should grant judgment as a matter of law only if the evidence does "not permit a reasonable jury to find in favor of the plaintiffs on any permissible claim or theory." Murray, 5 F.3d at 576.

II. The Statutory Framework

In determining whether there is any basis for finding that Chief Devine erred in concluding that, under the Brady Act, Fratus was not eligible to purchase a handgun, the starting point is the statute, itself. The Gun Control Act of 1968, 18 U.S.C. §§ 921 et seq., regulates the transfer and possession of firearms by, among other things, proscribing their sale to and/or possession by certain categories of individuals and by setting forth, in detail, the procedure that must be followed before a sale can be consummated. The Act prohibits the sale of a firearm to or the possession of a firearm by any person:

1. Who "is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year." 18 U.S.C. § 922(d)(1); see also § 922(g)(1);

or,

2. Who "has been adjudicated as a mental defective or has been committed to any mental institution." 18 U.S.C. § 922(d)(4); see also § 922(g)(4); or,

3. Whose purchase or possession "would be in violation of any State law." 18 U.S.C. § 922(b)(2).

Among the things that an individual must furnish in order to purchase a handgun, is a statement that the buyer is not a person described in §§ 922(d)(1) or 922(d)(4) (i.e., that the buyer is not under indictment for and has not been convicted of a crime punishable by imprisonment for a term of more than one year and that the buyer has not been adjudicated a mental defective or been committed to a mental institution). 18 U.S.C. § 922(s)(3)(B)(i) and (iv). The statute requires the seller to transmit the statement and other information supplied by the buyer to the chief law enforcement officer in the place where the buyer resides. At the time this case arose, the statute also required the chief law enforcement officer to make a reasonable effort to ascertain whether the proposed sale "would be in violation of the law, including research in whatever State and local recordkeeping systems are available." 18 U.S.C. § 922(s)(2).² A dealer is prohibited from consummating the sale unless the dealer either receives notice from the chief law enforcement officer indicating

²Section 922(s)(2) has since been declared unconstitutional on the ground that Congress lacks authority to require state and/or local officials to conduct background checks. Printz v. United States, ___ U.S. ___, ___, 117 S. Ct. 2365, 2383-84 (1997).

an absence of any information that the sale "would violate Federal, State or local law," 18 U.S.C. § 922(s)(1)(A)(ii)(II); or, the dealer does not receive any response from the chief law enforcement officer within five business days. 18 U.S.C. § 922(s)(1)(A)(ii)(I).

Fratus does not challenge the constitutionality of the limitations that the Brady Act places on the purchase of handguns. On the contrary, her claim is based on an alleged violation of the Brady Act. Specifically, she contends that Devine acted unlawfully by basing his determination on the misdemeanor charges against her even though the Brady Act only prohibits the acquisition of handguns by those indicted for or convicted of felonies.III.

The Claim for Injunctive Relief

To the extent that Fratus seeks an injunction that would prohibit Devine from relying on misdemeanor charges as a basis for blocking her efforts to acquire a handgun, her claim is moot. Fratus, herself, acknowledges that, under the Gun Control Act, her intervening convictions for assault with a dangerous weapon disqualify her from purchasing a firearm. See 18 U.S.C. §§ 922(d)(1) and 922(g)(1).

It is true that the mootness doctrine does not bar consideration of a claim arising from acts that are likely to recur and evade review. New Hampshire Right to Life Political Action Comm. v. Gardner, 99 F.3d 8, 18 (1st Cir. 1996). However, in this case, there is little likelihood that Fratus will ever again be deprived of any right to acquire a handgun based upon her

misdemeanor record because under the Gun Control Act, a felony conviction permanently disqualifies her from acquiring a firearm. 18 U.S.C. §§ 922(d)(1) and 922(g)(1).

Fratus' argues that the issue could arise again because her felony conviction could be eliminated via expungement or a gubernatorial pardon. That argument is not persuasive. Although Rhode Island law permits a convicted felon to seek expungement of the conviction ten years after completion of the sentence, such relief is available only to a "first offender" (i.e., an individual "who has not been previously convicted of or placed on probation for a felony or a misdemeanor"). R.I. Gen. Laws §§ 12-1.3-1(3) and 12-1.3-2. Since Fratus has several misdemeanor convictions, she would not qualify as a "first offender." Moreover, the possibility of a gubernatorial pardon is too speculative and remote to justify a finding that the issue is likely to recur.

IV. The Damages Claim

The fact that Fratus' March 18, 1997 felony conviction, now, moots her claim for injunctive relief is not dispositive of her claim for damages flowing from Devine's allegedly unlawful action in preventing her from acquiring a handgun on August 7, 1996.

However, in order to prevail on her damages claim, one of the things that Fratus must prove is that, at that time, she satisfied the eligibility requirements of the Brady Act. Although the statute is not a model of clarity, it appears to limit actions for erroneous denial of firearms based upon criminal history information to individuals who are "not prohibited from receipt of

a firearm pursuant to subsection (g) or (n) of section 922." 18 U.S.C. § 925A. Moreover, it would defy logic and common sense to permit a person who is prohibited from obtaining a firearm to recover damages from someone who prevents that person from obtaining it.

Fratus' own evidence clearly establishes that, at the time of her application, the Gun Control Act made it unlawful for her to possess and/or purchase a firearm because she was a person who had "been committed to a mental institution" within the meaning of § 922(g)(4). Fratus' medical records show that on three occasions between 1986 and 1989, she was admitted to Butler Hospital, an institution that specializes in the treatment of psychiatric disorders and substance abuse problems. Fratus describes one of those admissions as voluntary and based upon a recommendation by her psychiatrist who felt that the admission was necessary to alleviate Fratus' dependency on Valium. However, it is clear that the remaining two admissions were for the purpose of treating psychological disorders. One was an involuntary admission occasioned by a psychiatrist's determination that Fratus exhibited suicidal behavior.

The evidence also demonstrates that Fratus' purchase or possession of a firearm would have been a "violation of . . . State law" within the meaning of § 922(b)(2). R.I. Gen. Laws § 11-47-6 prohibits the acquisition of a firearm by an individual who "has been adjudicated or is under treatment or confinement as an habitual drunkard." Although the statute does not define the term

"habitual drunkard," it clearly was intended to deny firearms to individuals who abuse alcohol to an extent sufficiently severe and pervasive as to require treatment. As already noted, at the time of her application, the sentences that Fratus received for several of her misdemeanor convictions required that she undergo counseling for alcohol abuse.

Finally, even if Fratus could demonstrate eligibility to possess a firearm, her claim for damages would be barred by the provisions of 18 U.S.C. § 922(s)(7) which expressly exempts a chief law enforcement officer from liability for damages "for preventing . . . a sale or transfer to a person who may lawfully receive or possess a handgun."

Conclusion

For all of the foregoing reasons, the defendants' motion for judgment as a matter of law is GRANTED and the Clerk is directed to enter judgment in favor of the defendants.

IT IS SO ORDERED,

Ernest C. Torres
United States District Judge

Date: August , 1997